

RELATIONSHIPS OF THE DIRECTOR OF CENTRAL INTELLIGENCE WITH THE CONGRESS OF THE UNITED STATES

GENERAL AUTHORITIES:

In general, the authorities of the Congress with respect to all Executive departments and agencies, including those under the responsibility of the Director of Central Intelligence, stem from basic authorities set forth in the Constitution. As a practical matter, these authorities are exercised through the legislative oversight of various committees with respect to agencies of Government in their jurisdictional areas of responsibility and through the exercise of the power of the purse. The latter authority extends to both the oversight function, which is exercised through authorization for the expenditure of funds and through the Appropriations Committees of the Congress by the actual appropriation of the money needed by the various agencies to carry on their functions.

Initially, the oversight responsibilities for foreign intelligence agencies were exercised by the Armed Services Committees of the House and Senate, largely because of the jurisdiction these Committees had over the basic legislation (the National Security Act of 1947) which, among other things, established the Central Intelligence Agency and set forth the authorities and responsibilities of the Director of Central Intelligence. More recently, the Senate has transferred this oversight responsibility with respect to the Central Intelligence Agency and the Director of Central Intelligence exclusively to the Select Committee on Intelligence. This Committee's oversight responsibilities are discussed in great detail in the section entitled, "Specific Authorities."

The authority of the House and Senate Intelligence and Defense Subcommittees. In the Senate, there is in fact, an Intelligence Operations Subcommittee of the Defense Subcommittee which carries out the responsibilities for the appropriation of funds for the various intelligence agencies.

Other committees of the Congress derive a degree of authority over intelligence agencies by virtue of the basic charters of those committees in various substantive fields. Therefore, it can be argued persuasively that these committees are entitled to the product of intelligence as it relates to the responsibilities of those committees, e. g., in foreign policy, atomic energy, agriculture, commerce, and related substantive areas. (Jurisdiction of the Joint Committee on Atomic Energy is set forth by statute.)

While recognizing the authority of Congress with respect to the intelligence agencies of the Government, it must also be recognized that the statutes which established the Central Intelligence Agency and provided the authority and responsibilities for the Director of Central Intelligence, clearly stated that the basic responsibility of the Director of Central Intelligence and the Central Intelligence Agency was to the National Security Council. These statutes established the Director of Central Intelligence as the principal foreign intelligence advisor to the President as Chairman of the National Security Council.

The intelligence function is a unique one in any government, but it is especially so in a democracy. Normally, the function of intelligence is carried out by the executive as a part of his executive responsibility generally, and his specific responsibility for the conduct of foreign affairs. In the United

States, the intelligence function has been recognized in statute, however, the conduct of espionage and counter-espionage are functions which are not specifically set forth in statute and are not normally officially recognized by foreign governments in any formal way. In any event, it is clear that the nature of intelligence and related activities is such that there is an absolute need for confidentiality in the relationships of intelligence organizations with other intelligence services, with agents and with other human sources. Some technical sources of intelligence and methods of operations also fall into this category.

SPECIFIC AUTHORITIES:

The authorities of the Director of Central Intelligence with respect to the Central Intelligence Agency and the exercise of his functions as Director of Central Intelligence, are contained in the National Security Act of 1947, as amended, and in the Central Intelligence Agency Act of 1949, as amended. Section 102(d)(3) of the National Security Act places upon the Director the responsibility of protecting intelligence sources and methods from unauthorized disclosure. In the interests of the security of the foreign intelligence activities of the United States, and in order to further implement the provisions of Section 102(d)(3) of the National Security Act, Section 6 of the Central Intelligence Agency Act exempts the Agency from provisions of any law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. It also provides that the Director of the Bureau of the Budget (now the Office of Management and Budget) was exempt from requirements of law with respect to certain reports

to the Congress. It would seem, therefore, that if the Congress in its wisdom exempted the Agency from disclosing the names and other pertinent data relating to personnel employed by the Agency, it certainly intended to exempt the Agency from disclosing the most sensitive aspects of its activities, such as names of agents and the identities of foreign intelligence services with whom it has sensitive relationships.

The jurisdiction of the committees of Congress is set forth in the Rules of the House and the Senate and in the Resolutions of those bodies which constitute the charters of those committees. The most specific of these charters with respect to intelligence, is that of the newly established Senate Select Committee on Intelligence. That Resolution, S. Res. 400, provided that the Committee shall have exclusive jurisdiction over the Central Intelligence Agency and the Director of Central Intelligence and "sequential" jurisdiction over the Defense Intelligence Agency, the National Security Agency, and other intelligence agencies. The sequential jurisdiction over the other intelligence agencies is shared with those other committees, such as the Armed Services, Foreign Relations, and Judiciary Committees, which have specific jurisdiction with respect to those agencies

An additional responsibility for reporting to the Congress was provided for by statute in Section 662 of the Foreign Assistance Act of 1961, as amended (the so-called Hughes/Ryan amendment). This amendment prohibits the expenditure of funds by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security and reports in a timely fashion a description

of such activities to the appropriate committees of Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs (International Relations) of the House of Representatives. Under this statute the reports are currently made to seven committees of the Congress.

DISCUSSION:

The collection of intelligence and the conduct of covert operations in a democratic society poses problems, both for the Congress and for the Executive Branch which are as unique as the intelligence function itself. It is essential that the intelligence agencies maintain credibility with the Congress which is above reproach. This requires close relationships and absolute confidence and credibility between the Director of Central Intelligence and those committees which have been designated as having the responsibility for the oversight of intelligence organizations. It is equally essential that the Congress recognize that the exercise of its prerogatives must be tempered by a sense of reason and responsibility which leaves to the judgment and integrity of the Director of Central Intelligence the final decision with respect to the identification of specific sources of information and modes of operation, such as, the identities of agents, the identities and relationships with other intelligence services and the description of some of the most sensitive and sophisticated technical means of intelligence collection.

The Director, after all, is nominated to the position he holds by the President and must be confirmed by the Senate. This is the means by which the Congress should exercise its right to determine the judgment and integrity of the man it

places in this position which was described by the late Senator Richard Russell as the second most important position in our Government. If the Congress, for whatever reason, loses its confidence in the judgment and integrity of the Director of Central Intelligence, the responsible course is for the Congress to seek his removal rather than to demand the identity of the individuals who have placed their utmost trust in him. Demanding the identities of some of the most sensitive intelligence information is not an appropriate alternative, for it undermines the basic ingredient so essential to successful intelligence relationships -- the ability of the Director of Central Intelligence to assure his agents and foreign intelligence services that their identities will be protected.

CONCLUSIONS:

The Director of Central Intelligence should keep the oversight committees of the Congress, and by this we mean no more than four committees (two in the House and two in the Senate), thoroughly informed with respect to the activities of the intelligence agencies of the Government. This means that these committees (and these committees only) will have access to essentially all information concerning the intelligence activities of our Government. It should be understood, however, that the responsibility of the Director of Central Intelligence to these committees does not include revealing the identity of agents, extremely sensitive information, relationships with foreign intelligence services, and perhaps the details of certain technical collection systems. Other committees of Congress are entitled only to product of intelligence which is pertinent to their area of jurisdiction. Questions of conflict regarding the jurisdiction of these other committees should be resolved by the Chairmen of the oversight committees in

consultation with one another. Should a Director of Central Intelligence be faced with a demand to divulge to any committee the identities and details of intelligence operatives and operations which he feels would be contrary to his inherent responsibilities as required by statute, he should refuse to provide the information and, if not supported by the President in this position, should resign his position rather than compromise his integrity and the integrity of the United States Intelligence Services.

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DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Director

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Following our several discussions yesterday on the subject of your responsibilities to the Congress, I decided to put something down on paper for our own benefit even though we decided not to issue any "guidelines." This is not a finished paper, but if you think it has merit, I will polish it up for our own information and perhaps for your sharing with the CFL. I am sending copies of this draft to Tony Lapham, Bill Wells, and [redacted] for their information and comment.

[redacted]
George L. Cary
Legislative Counsel

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